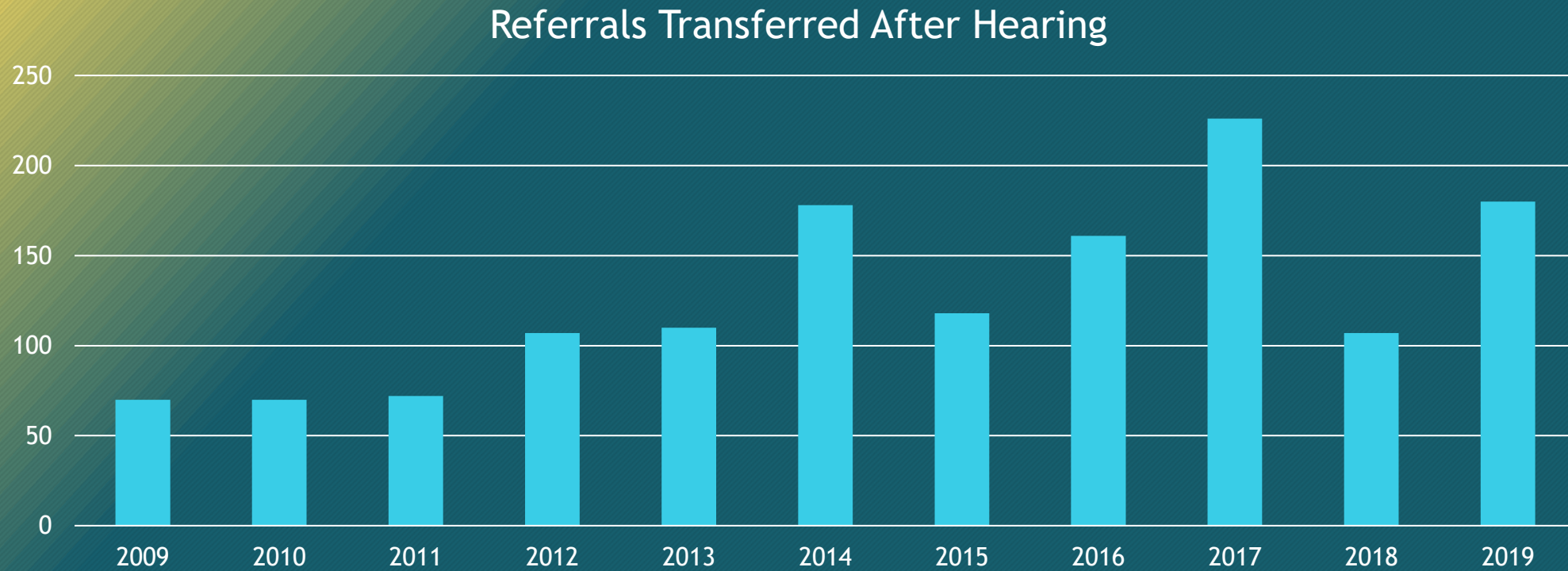


What Everyone Needs to Know About Juvenile Transfer Defense

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Why are we talking about transfer hearings?







*Original Youth Court
Jurisdiction*

Offense/Arrest

Petition/Motion to Transfer

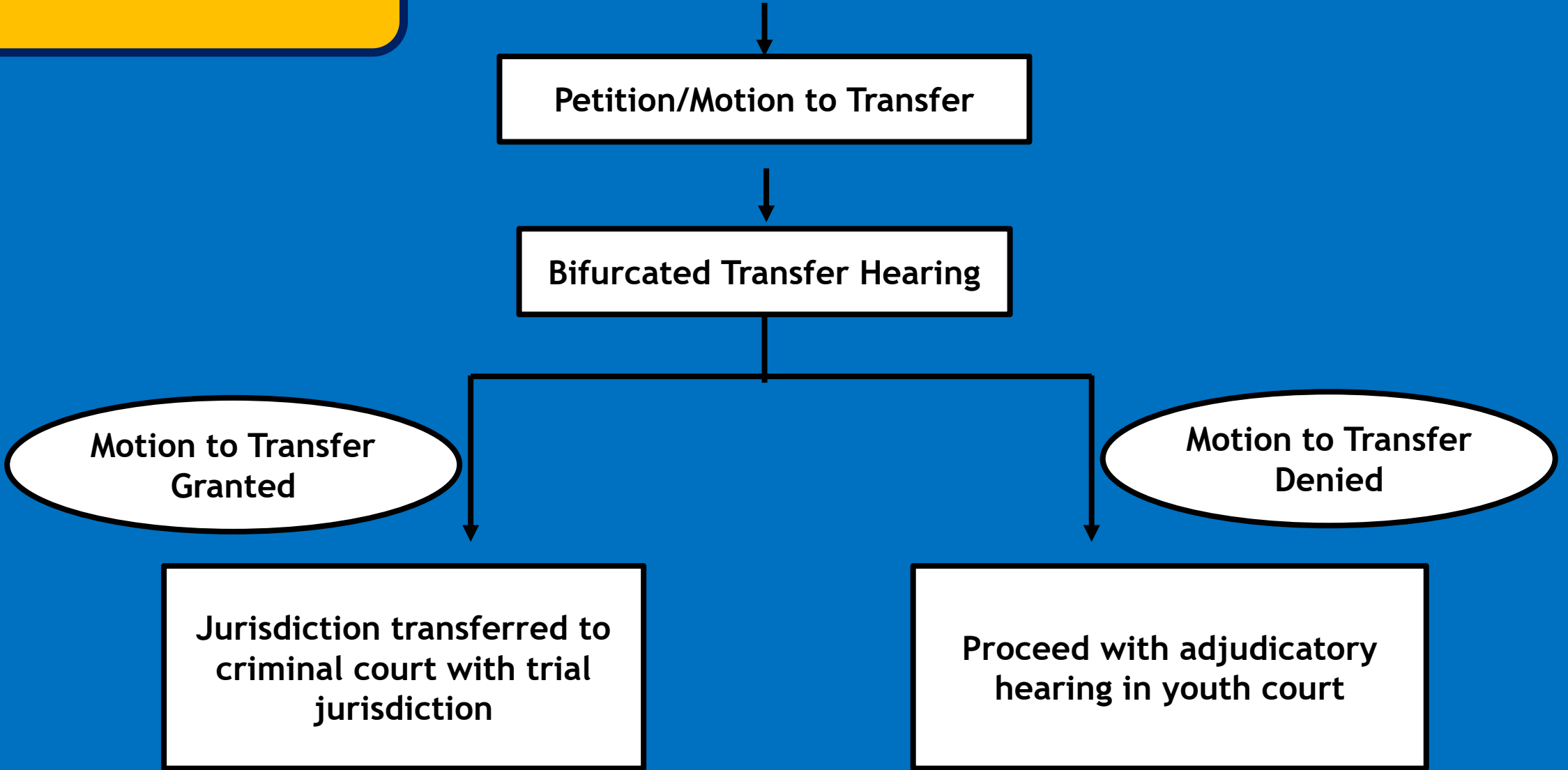
Bifurcated Transfer Hearing

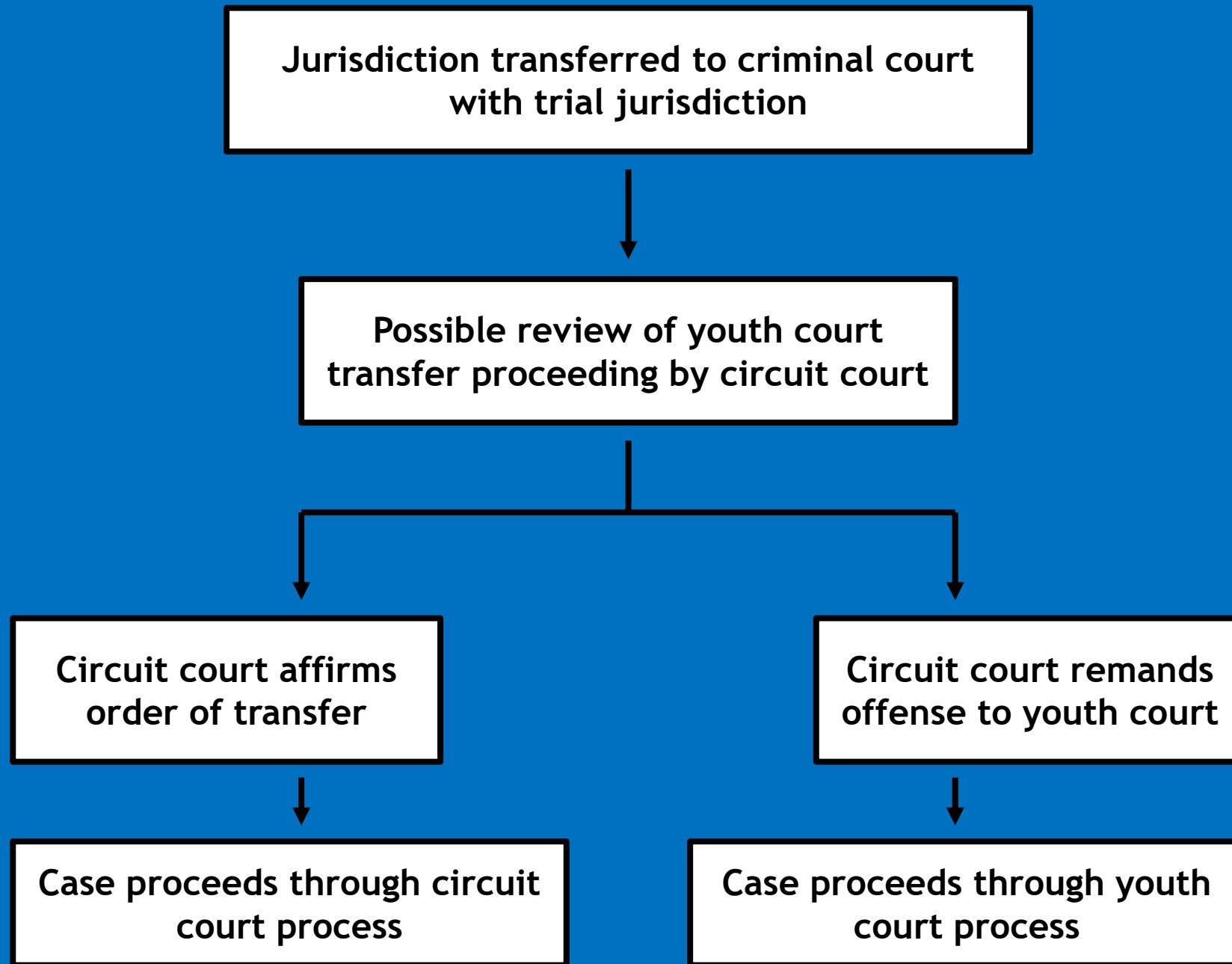
Motion to Transfer
Granted

Jurisdiction transferred to
criminal court with trial
jurisdiction

Motion to Transfer
Denied

Proceed with adjudicatory
hearing in youth court





Child charged in original
jurisdiction of circuit court

*Original Circuit Court
Jurisdiction*

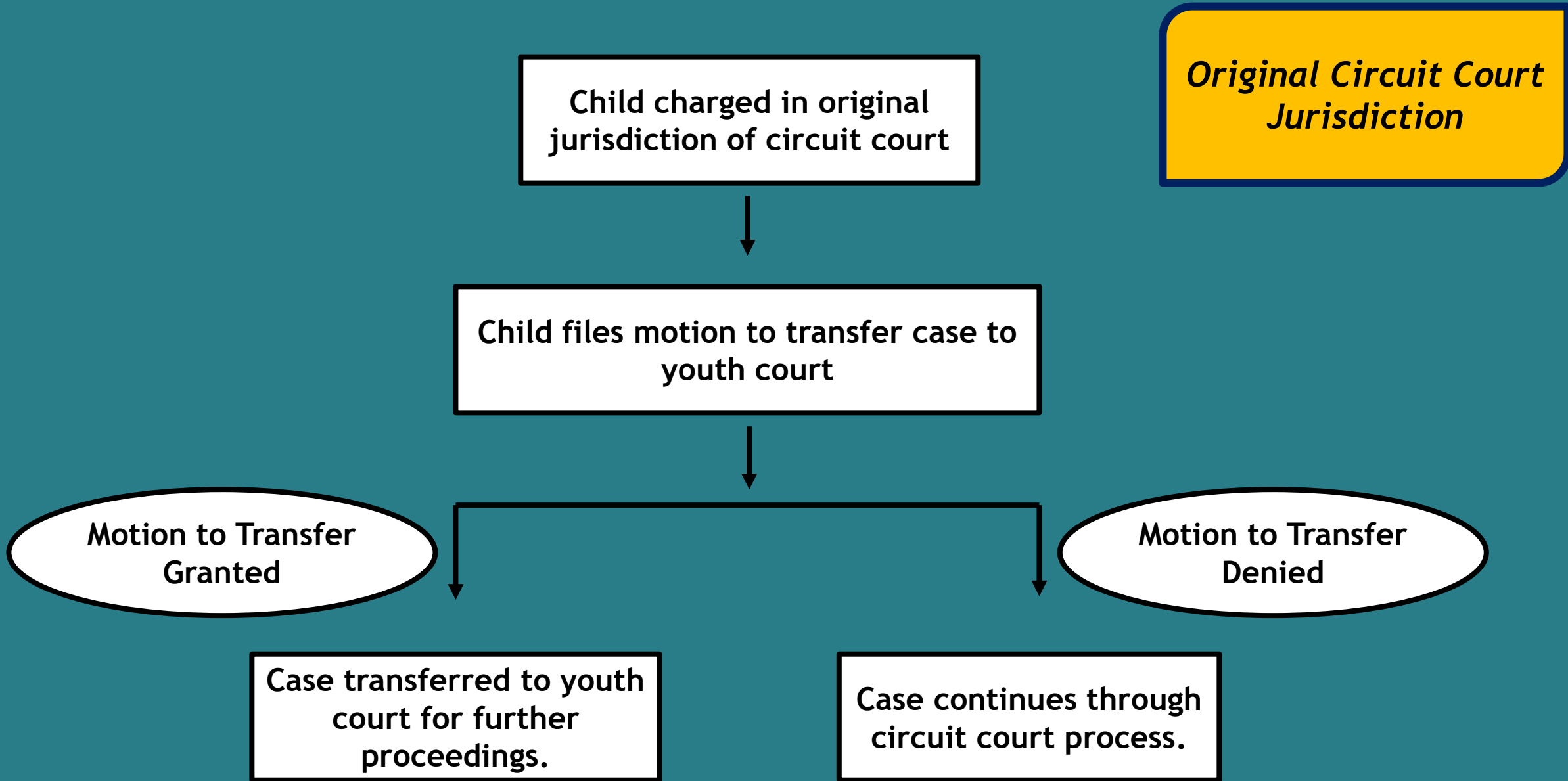
Child files motion to transfer case to
youth court

Motion to Transfer
Granted

Motion to Transfer
Denied

Case transferred to youth
court for further
proceedings.

Case continues through
circuit court process.



Transfer from Youth Court to Other Courts

Who can be transferred?

Child at least 13
yrs. (but not yet
18 at the time
of the offense)

Charged by
petition to be a
delinquent child

Initiation of the Transfer Process

Transfer proceedings are initiated by the filing of a motion. It can be:

Prosecutor's Motion

OR

Court's own motion

When is the transfer motion filed and how is the youth notified?

Motion is filed prior to the date set for adjudication BUT no later than (10) days from the filing of the petition.

Summons are served in the same manner as other youth court summons with a copy of the motion to transfer and the petition attached. (see §43-21-507 for summons information)



Youth court may order a transfer study at any time after the motion to transfer is filed.

The transfer study and any other social record which the youth court will consider at the transfer hearing shall be made available to the child's counsel prior to the hearing.

Transfer Study

Youth's Rights at Transfer Hearing

- Right to Counsel
 - The child **SHALL** be represented by counsel in transfer proceedings.
- Right to a Hearing

Rights

Right to Be Present

If the youth court transfers jurisdiction of the alleged offense to a criminal court, the youth court shall enter a transfer order containing facts showing that the hearing was held in the presence of the child and his counsel.
§43-21-157(6)(c) emphasis added.

Right to Cross-Examine and Present a Defense

Rights

- Right to Court-Appointed Experts
 - Motion for Appointment and Funding of Expert
 - Youth have both a due process and equal protection right to court-appointed expert assistance. See Ake v. Oklahoma, 470 U.S. 68
 - Three factors to consider regarding the due process right to state-paid expert assistance include:
 - The private liberty interest of the youth: a youth who is considered for transfer faces a major deprivation of liberty and/or multiple negative consequences of an adult conviction.

Rights

- **Governmental Interests:** (a) preserving state resources, (b) Accurate and Reliable Transfer Decision (financial interest doesn't override state's separate interest in ensuring that transfer decision is accurate and reliable. (c) Protecting youth: State also has an interest in protecting its youth and serving their needs and best interests with the least restrictive care.
- **Risk of an Erroneous Decision:** Independent experts may enhance the accuracy and reliability of a transfer decision. Expert assistance is critical for the defense to refute state claims. (experts disagree on what constitutes mental illness).

The Hearing

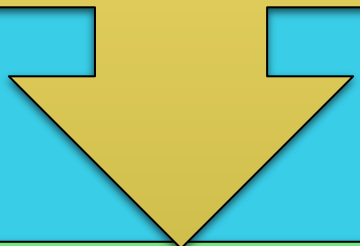
Transfers Hearings are Bifurcated

§43-21-157(3)

- Determination of Probable Cause
 - Rules of Evidence Do Not Apply
- Probable cause portion of the transfer hearing can be waived by the child
 - for transfer hearing purposes only
 - AND
 - with the assistance of counsel.

Reasonable Prospects of Rehabilitation

No reasonable prospects of
rehabilitation within the
juvenile justice system.



Burden of Proof: Clear and
Convincing Evidence

Prosecution has the
burden of proof.

No Waiver of
Reasonable
Prospects
Hearing

Failure to follow statutory procedures in transferring jurisdiction from youth court to circuit court in drug case involving 16-year-old defendant rendered transfer improper; transfer was not initiated on motion of youth court prosecutor or on youth court's own motion but was brought up by counsel in another related case, there was no bifurcated transfer hearing held, and transfer order did not contain requisite findings of probable cause.

Buck v. State, 838 So.2d 256
(Miss. 2003)

Evidentiary Rules

- Rules of Evidence Apply at Transfer Hearing During Prospects of Rehabilitation Phase.
- Mississippi rules of evidence govern proceedings in the courts of the State of Mississippi to the extent and with the exceptions stated in rule 1101. M.R.E. 101

M.R.E. Rule 1101 (Relative parts)

- **Rule 1101. Applicability of the Rules**
- (a) To Courts and Proceedings. These rules apply to all cases and proceedings in Mississippi courts, except as provided in subdivision (b).

- (b) **Exceptions.** These rules--except for those on privilege- **do not apply to the following:**
 - (1) the court's determination, under [Rule 104\(a\)](#), on a preliminary question of fact governing admissibility;
 - (2) grand jury proceedings,
 - (3) contempt proceedings in which the court may act summarily; and
 - (4) these miscellaneous proceedings:
 - extradition or rendition;
 - issuing an arrest warrant, criminal summons, or search warrant;
 - *probable cause hearings in criminal cases and youth court cases*;...
 - *disposition hearings*;
 - *granting or revoking probation*; and
 - considering whether to release on bail or otherwise.

Factors to be considered

(a) Whether or not the alleged offense constituted a substantial danger to the public;

(b) The seriousness of the alleged offense;

(c) Whether or not the transfer is required to protect the community;

(d) Whether or not the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

Factors

(e) Whether the alleged offense was against persons or against property, greater weight being given to the offense against persons, especially if personal injury resulted;

(f) The sophistication, maturity and educational background of the child;

(g) The child's home situation, emotional condition and life-style;

Factors

(h) The history of the child, including experience with the juvenile justice system, other courts, probation, commitments to juvenile institutions or other placements;

(i) Whether or not the child can be retained in the juvenile justice system long enough for effective treatment or rehabilitation;

(j) The dispositional resources available to the juvenile justice system;

(k) Dispositional resources available to the adult correctional system for the child if treated as an adult;

Factors

(l) Whether the alleged offense was committed on school property, public or private, or at any school-sponsored event, and constituted a substantial danger to other students;

(m) Any other factors deemed relevant by the youth court; and

(n) Nothing in this subsection shall prohibit the transfer of jurisdiction of an alleged offense and a child if that child, at the time of the transfer hearing, previously has not been placed in a juvenile institution.

Court, may, in its discretion, transfer jurisdiction

OF: (a) the alleged offense described in the petition, or
(b) a lesser included offense

TO: The criminal court which would have trial jurisdiction of such offense if committed by an adult.



Transfer Order

“...the youth court shall enter a transfer order containing: ...”

Order SHALL
Contain

Facts showing that the youth court had jurisdiction of the cause and of the parties;

Facts showing that the child was represented by counsel;

Order Contents

Facts showing that the hearing was held in the presence of the child and his counsel;

A recital of the findings of probable cause and the facts and reasons underlying the youth court's decision to transfer jurisdiction of the alleged offense;

Order Contents

The conditions of custody or release of the child pending criminal court proceedings, including bail or recognizance as the case may justify, as well as a designation of the custodian for the time being; and

A designation of the alleged offense transferred and of the court to which the transfer is made and a direction to the clerk to forward for filing in such court a certified copy of the transfer order of the youth court.

Review of Transfer Proceedings By Circuit Court

The circuit court may review the transfer proceedings on motion of the transferred child.

Such review shall be on the record of the hearing in the youth court.

Review

The circuit court shall remand the offense to the youth court if there is no *substantial evidence* to support the order of the youth court.

The circuit court may also review the conditions of custody or release pending criminal court proceedings.

Effect of Transfer

When jurisdiction of an offense is transferred to the circuit court, or when a youth has committed an act which is in original circuit court jurisdiction pursuant to Section 43-21-151, the jurisdiction of the youth court over the youth for any future offenses is terminated,

Exceptions

- Except that jurisdiction over future offenses is not terminated if
 - the circuit court transfers or remands the transferred case to the youth court
 - Or
 - if a child who has been transferred to the circuit court or is in the original jurisdiction of the circuit court is not convicted.

§ 43-21-159 Transfer of cases

What happens when a child comes before a court (other than youth court), and it is determined that they are under the jurisdiction of the youth court?



§ 43-21-159(1) Transfer of cases

That court shall immediately dismiss the proceeding without prejudice and forward all documents pertaining to the cause to the youth court; and all entries in permanent records shall be expunged.

The jurisdiction of the offense
has been transferred to such
court as provided in this
chapter

OR

The child has previously been
the subject of a transfer from
the youth court to the circuit
court for trial as an adult and
was convicted

Exceptions

No Dismissal If ...

43-21-159(7) No offense involving the use or possession of a firearm by a child who has reached his fifteenth birthday and which, if committed by an adult would be a felony, shall be transferred to the youth court.

Transfer Prohibited

When can the case be transferred?

At any stage of the proceeding prior to the attachment of jeopardy.



Necessary Findings to Transfer to Youth Court

Circuit court must find that it would *be in the best interest of such child and in the interest of justice* to transfer the proceedings to youth court.



Exceptions

Unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted

OR

Has previously been convicted of a crime which was in original circuit court jurisdiction

What we need
to know from
State v. U.G.,
726 So.2d 151

The decision to transfer a case to youth court is committed to the circuit judge's sound discretion. Therefore, the standard of review for this Court is an abuse of discretion.

“Neither the best interest of the child nor the “interest of justice” overrides the other, but they can be separate interests and must be given full review by the circuit court. The interest of justice is not subordinate to the best interest of the child. Often, but not always, the two separate interests will merge and be concurrent or commensurate. However, at all times the lower court must consider both interests separately.”

State v. U.G., 726 So.2d 151,155

More from U.G.

The circuit court declined to consider the factors as requested by the State. While this Court finds that consideration of these twelve factors was not mandated by statute, these factors do provide a guideline or starting point for circuit court judges when entertaining a motion to transfer a case to youth court. It is by no means an all-inclusive list, nor a mandatory one; it is a roadmap of sorts.

Resources

- Uniform Rules of Youth Court Practice
 - Rule 23 Transfer of Cases

Manual for Mississippi Youth Courts

<https://mjc.olemiss.edu/wp-content/uploads/sites/134/2020/06/Manual-for-Mississippi-Youth-Courts-2021.pdf>

More Resources

- Trial Manual for Defense Attorneys in Juvenile Delinquency Cases
 - Chapter 13: Transfer to Adult Court
- <https://njdc.info/trial-manual-for-defense-attorneys-in-juvenile-delinquency-cases-by-randy-hertz-martin-guggenheim-anthony-g-amsterdam/>

QUESTIONS



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